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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,080	10/06/2003	Michael Roy Barry	TOMK0001	9923
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HOGAN & HARTSON LLP ONE TABOR CENTER, SUITE 1500 1200 SEVENTEENTH ST DENVER, CO 80202				
			EXAMINER ARYANPOUR, MITRA	
			ART UNIT 3711	PAPER NUMBER

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/680,080

Applicant(s)

BARRY, MICHAEL ROY

Examiner

Mitra Aryanpour

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 19 and 29-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 19 and 29-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 April 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "4" has been used to designate both axial bore and a line; reference character "12" has been used to designate both longer vertical line and median vertical portion. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the friction connection (see claim 36) and incremental pivoting connecting member (see claim 37) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from

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the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The disclosure is objected to because of the following informalities: on page 3, line 1, "is" should be deleted before "embodiment". Appropriate correction is required for the above objection.

Claim Objections

4. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 28-39 been renumbered 29-40.

It is unclear if claim 28 is remaining in this application or if it is cancelled. It should be noted that claim 28 is dependent on cancelled claim 26.

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5. Claims 13 and 19 are objected to because of the following informalities: In claim 13, line 3, "members" should be singular after "restraining". In claim 19, line 2, "of" should be deleted after "at least". Appropriate correction is required for the above objection.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 6, 7-10, 12-14, 29-33, 35-39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claim 6, the specification and drawings as filed do not disclose "transverse cross members joined by a longitudinally extending member which extends parallel to the shaft axis but spaced apart therefrom". In claim 29, the specification and drawings as filed do not disclose "curved cross members"; in claim 32, the specification and drawings as filed do not disclose "a quadrilateral shape"; in claim 33, the specification and drawings as filed do not disclose "a triangle"; in claim 35, the specification and drawings as filed do not disclose the claimed limitations of claim 35; in claims 38 and 39, the specification and drawings as filed do not disclose the claimed limitations.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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9. Claims 6, 7, 29-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 6, the phrase “transverse cross members joined by a longitudinally extending member which extends parallel to the shaft axis but spaced apart therefrom” is vague and indefinite. It is unclear what structure such language encompasses.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-5, 34 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Blackburn (774,862).

Regarding claim 1, Blackburn discloses a cue rest comprising an elongated shaft (handle 1) defining a central longitudinally extending shaft axis, a table engaging member (lower ends of the pair of jaws 2), and an intermediate connecting member (arms 4) connecting the table engaging member with the shaft, the intermediate connecting member (arms 4) being shaped for avoiding an obstruction on the table adjacent a location where the table engaging member is to engage the table (see figure 2). With regards to the limitation “being shaped for avoiding an obstruction”, the claim does not require the intermediate connecting member to be of a particular shape, size or form, but merely of “a shape”. Broadly speaking, this can be any shape, since the “particular” type of obstruction has not been defined. Additionally, it should be noted that the

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claim requires that obstruction be positioned on a location on the table, again this can be any location on the table.

Regarding claim 2, Blackburn shows the intermediate connecting member (arms 4) extends between two spaced apart ends, one end being connected to the shaft, and the other end being connected to the table engaging member (see figure 2).

Regarding claim 3, Blackburn shows the two ends of the intermediate connecting member (arms 4) are aligned with each other and with the shaft axis (see figures 1 and 5).

Regarding claim 4, Blackburn shows the intermediate connecting member (arms 4) comprises an elongated intermediate connecting member extending between the shaft and the table engaging member (lower ends of the pair of jaws 2).

Regarding claim 5, Blackburn shows a cue engaging member (the upper mid portion of the pair of jaws 2) for cradling the cue extends from the table engaging member.

Regarding claim 34, Blackburn shows a cue engaging member (jaws 2 form a "V") for cradling a cue extends from the table engaging member.

Regarding claim 40, note the rejection of claim 1.

Alternatively:

12. Claims 1-5, 8-14, 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Knight (GB 232,300 A).

Regarding claim 1, Knight discloses a cue rest comprising an elongated shaft (body 10) defining a central longitudinally extending shaft axis, a table engaging member (lower arms 16 as shown in figures 4 and 5), and an intermediate connecting member (rod or slide 12) connecting the table engaging member with the shaft, the intermediate connecting member (rod

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or slide 12) being shaped for avoiding an obstruction on the table adjacent a location where the table engaging member is to engage the table (see figures 3-5).

Regarding claim 2, Knight shows the intermediate connecting member (rod or slide 12) extends between two spaced apart ends, one end being connected to the shaft, and the other end being connected to the table engaging member (see figures 3 and 5).

Regarding claim 3, Knight shows the two ends of the intermediate connecting member (rod 12) are aligned with each other and with the shaft axis (see figures 3 and 5).

Regarding claim 4, Knight shows the intermediate connecting member (rod or slide 12) comprises an elongated intermediate connecting member extending between the shaft and the table engaging means (lower arms 16 as in figures 4 and 5).

Regarding claim 5, Knight shows a cue engaging member (upper arms 16) for cradling the cue extends from the table engaging means (see figures 5-7).

Regarding claim 8, Knight shows the table engaging member (lower arms 16) is adjustably mounted to the intermediate connecting member (rod or slide 12; see page 2, paragraphs 1, 4 and 6).

Regarding claims 9 and 10 Knight shows the table engaging member (lower arms 16) is pivotally connected to the intermediate connecting member and it is pivotable about the shaft axis (see figure 5; and page 2, paragraph 6).

Regarding claim 11, Knight provides a member (see page 2, first paragraph, lines 6-11) to restrain the rotational movement of the intermediate connecting member about the shaft axis.

Regarding claim 12, Knight additionally shows the table engaging member (lower legs 16) comprises two arms and the cue engaging member (upper legs 16) comprises two arms,

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which are arranged to form a cruciform structure, the arms defining angles therebetween (see figures 1, 2, 5-7).

Regarding claim 13, Knight shows at least one of the table engaging member or cue engaging member houses a rotation restraining member (see page 2, paragraph 1, lines 6-11 and paragraph 2).

Regarding claim 14, Knight additionally shows the intermediate connecting member (rod or slide 12) is connectable to the table engaging member (lower arms 16) by an axial bolt (the broadest reasonable interpretation of *axial bolt* would include catchment device 22), which is adapted for engaging with the rotation restraining member (see page 2, paragraph 2).

Regarding claim 19, Knight shows the axial bolt (catchment device 22) is integrally formed with the intermediate connecting member (see figure 2, also page 2, paragraph 2, lines 1-3).

Response to Arguments

13. Applicant's arguments filed 05 April 2005 have been fully considered but they are not persuasive. With regards to applicant's remarks that the intermediate connecting means of Blackburn is not shaped to avoid an adjacent obstruction. Applicant's remarks are not fully understood, since the claim does not provide a particular guideline as to the shape, size or form for the connecting means. Furthermore, the claim requires that the "intermediate connecting member" be of a shape to avoid an obstruction adjacent a location on the table when the engaging member engages the table. The Blackburn and the Knight patents both do this.

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703-308-3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA
16 June 2005



MITRA ARYANPOUR
PRIMARY EXAMINER